

Service Corporation
Fuel Supply Department
P.O. Box 700
Lancaster, OH 43130-0700
614 687 1440

cc ✓ Bob O. - Mr + MOA
- Lowell - Mr + MOA



Mary Ann Wright
State of Utah
Natural Resources
Oil, Gas & Mining
Abandoned Mine
Reclamation Program
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

RECEIVED
MAY 24 1989

DIVISION OF
OIL, GAS & MINING

May 23, 1989

Re: UDOGM/Blackhawk Agreements

Dear Mary Ann:

Attached hereto for your file are: 2 originals of the UDOGM/Blackhawk Agreement and attached Right of Entry, 3 originals of the Blackhawk/Savage Right of Entry which were executed by Blackhawk and Bob said he will obtain Savage's signature.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chandler".

R. Chandler Nowicki
Assistant Legal Counsel
Fuel Supply Department

RCN/sh

Attachments

cc: J. L. Reynolds, III
J. K. McWilliams

AGREEMENT
BY AND BETWEEN
BLACKHAWK COAL COMPANY,
and
UTAH DIVISION OF OIL, GAS & MINING

This Agreement is made and entered into by and between the Utah Division of Oil, Gas & Mining ("the Division") and Blackhawk Coal Company ("Blackhawk").

Recitals

- A. The Division's Abandoned Mine Reclamation Program ("AMRP") requires a waste disposal area to complete the reclamation of the Willow Creek Project, the Price River Coal Pile Project, and other nearby abandoned waste piles (the "Reclamation"). These waste piles currently create a safety hazard from burning coal; negative environmental impacts on stream sediment load, aquatic life, and air and water quality; and a negative economic impact from clogged irrigation ditches downstream.
- B. Blackhawk owns the only site in close proximity which is capable of safely receiving the large amounts of coal waste. Approximately nine-and-one-half acres of this site are part of a permitted area which is due for reclamation this year under the authority of the Division's Coal Regulatory Program ("CRP").
- C. Because Blackhawk is currently responsible for reclaiming the permitted site under a Reclamation Permit, and because some of the abandoned coal waste piles are located on Blackhawk's property, Blackhawk wishes to assist the AMRP in the Reclamation by providing the nine-and-one-half acre site on the north end of its permitted area for a waste disposal area.
- D. An assessment has been made of the advantages to the Division and to Blackhawk and the provisions herein will benefit all parties:
 - 1. A virgin site will not have to be disturbed for a disposal area or for obtaining cover material, since an already disturbed site will be provided to allow completion of the Reclamation.

2. Some aspects of reclamation will be enhanced in comparison to the earlier Blackhawk Reclamation Plan: the highwall at the site will be greatly reduced; stabilization and enhancement will take place along 1500 feet of streambank; and the area will be returned to a more natural contour, approximating its original landform prior to creation of the large pad in pre-Act time.
 3. The AMRP will save approximately \$500,000 in reclamation costs by using this nearby disposal area.
 4. Blackhawk will cooperate in the Reclamation, saving additional state share reclamation fund money.
 5. Blackhawk will save reclamation money because only the remaining permitted acreage will need to be reclaimed by Blackhawk under the authority of the CRP.
- E. The Division and Blackhawk favor the Reclamation at the site by the AMRP and wish to enter into this Agreement to facilitate that purpose.
- F. Precedent has been set in other states for removing acreage from Title V permitted sites for use as Title IV waste disposal areas and the Office of Surface Mining Reclamation and Enforcement (OSMRE) has addressed the issues of eligibility and reclamation standards in *Placement of Excess Spoil from AML Projects on Lands Affected by Mining After August 3, 1977*, a memorandum received April 27, 1984 by the Division, and in the Federal Assistance Manual, Chapter 4-06-30, *Site Eligibility for AMLR Projects*. These documents are attached hereto and hereby made a part hereof, marked Exhibit A.

Agreement

NOW THEREFORE, in consideration of the mutual obligations and undertakings contained in this Agreement, Blackhawk and the Division agree to the following:

1. The Division through its CRP, agrees to approve an amendment to the present permit site to reduce the site by nine-and-one-half acres as shown on the map, attached hereto and hereby made a part hereof, marked Exhibit B.

2. Blackhawk agrees to the permitting responsibility to the CRP for the remaining acreage under Blackhawk's permit.
3. Blackhawk agrees to execute a Right of Entry for the AMRP use of the nine-and-one-half acres to be released in Paragraph 1 above, plus additional surrounding acreage to the stream edge and up the hillside from the pad, as outlined on the attached map, Exhibit B, and known as the AMRP Willow Creek Reclamation Disposal Site ("Reclamation Site"). The terms of the Right of Entry are attached hereto as Exhibit C and made a part hereof.
4. Upon completion of the Reclamation, the AMRP agrees to remove the drainage culvert which bisects the original permitted site and to establish drainage for the Reclamation Site. The AMRP will also make provisions for drainage from the undisturbed area which may need to bypass the Reclamation Site. Blackhawk agrees to tie drainage from the undisturbed area, upslope from its permit area, into the drainage leading into Willow Creek. The drainage provisions which will replace the culvert will be agreed upon by the AMRP and Blackhawk. The AMRP agrees to install gabion structures through the steep part of the channel down to Willow Creek, and Blackhawk agrees to bear the costs of the gabions and their installation.
5. The AMRP agrees to maintain in good and operable condition the steel and concrete reinforced culvert bridge at the entrance to the Blackhawk property, until completion of the Reclamation.
6. Blackhawk agrees to have the access road to the Reclamation Site in good and operable condition. The AMRP agrees to maintain the road in the same condition during haulage of material to the Reclamation Site, and upon completion of the Reclamation, return it to the condition prior to haulage. After that time, Blackhawk agrees to accept responsibility for maintenance and disposition of the road under the terms of the amended Reclamation Plan approved by the CRP.

Blackhawk, Utah DOGM Agreement

7. Blackhawk agrees to share in the cost of reclamation of the AMRP Reclamation Site. Blackhawk's cost shall constitute the amount spent on gabions, gabion installation, and revegetation of the AMRP Reclamation site and will not exceed \$45,000.
8. Blackhawk agrees to provide a consultant to be available for technical consultation on the joint reclamation, as cited in Paragraphs # 4 through #7 above, between the AMRP and Blackhawk.
9. The AMRP will make a good faith effort to complete the Reclamation by November 15, 1990. If the AMRP is unable to complete the reclamation by this time, then an extension of this Agreement will be considered.
10. Except as set forth in this Agreement, neither party shall undertake any activity, expressed or implied, nor make any representation which purports to bind the other.
11. Modification of this Agreement shall be in writing and approved by all parties hereto.

This Agreement shall become effective when signed by both parties to this Agreement and shall remain in effect for the term of the Reclamation, but no longer than April 1, 1991, unless terminated with thirty days written notice by either party.

BLACKHAWK COAL COMPANY



J. E. Katlic, President and
Chief Operating Officer

APPROVED
LEGAL-FSD

UTAH DIVISION OF OIL, GAS & MINING


Dianne R. Nielson
Director

APPROVED AS TO FORM:


Barbara W. Roberts
Utah Assistant Attorney General

DATED this 16 day of May, 1989.

AM82



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

EXHIBIT A-1

RECEIVED

APR 27 1984

MEMORANDUM

TO: Phyllis Thompson, Chief
AML Reclamation Division
Office of Surface Mining

Jerry Ennis, Chief
Division of Federal Reclamation Programs
Office of Surface Mining

FROM: Edward H. Bonekemper, III, Assistant Solicitor
Branch of Governmental Relations
Division of Surface Mining

SUBJECT: Placement of Excess Spoil from AML Projects on
Lands Affected by Mining After August 3, 1977

This responds to an issue raised by both the Federal and State Abandoned Mine Land Programs concerning the legality of placing excess spoil material from AML project sites on lands adversely affected by mining after the enactment of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (SMCRA). Since spoil material may be used to reclaim or partially reclaim post-SMCRA affected sites, your respective offices have inquired whether such expenditures violate the provisions of Section 404 which limit the expenditure of funds only for the reclamation of eligible lands. Within certain parameters, I believe that it does not.

Issue

Whether excess spoil material from a bona fide AML site may be placed on an unreclaimed area mined after August 3, 1977?

Answer

Spoil material generated by a bona fide AML project may be placed on areas mined and left unreclaimed after August 3, 1977 under the following conditions: (1) the disposal effort should not significantly increase the costs of completing the AML project; (2) the disposal activity should be limited to those actions necessary to properly dispose of the material in question; and (3) the disposal site should only be as large an area as is technically required.

Discussion

A. Case History - St. Charles Watershed Project

The St. Charles Watershed Project includes approximately 8,000 acres of land and entails the cleaning out of several miles of stream channel affected by the silt and sediment runoff from abandoned mines in the watershed. The State of Virginia has proposed, as part of this cooperative agreement project, to dispose of the stream channel material on at least two and potentially six sites which are commonly referred to as two-acre exempt sites.

According to the Commonwealth of Virginia, the proposed two-acre exempt sites are small face-up operations and application of the shadow definition would still qualify these sites for the two-acre exemption in Section 528(2) of SMCRA. The sites are not contiguous, are not connected by haul roads and were mined by several different companies. The proposed two-acre exempt sites are in the general proximity of the AML sites, and access is readily available. The material from the stream channel is a fine textured, non-toxic material which will support vegetation using conventional techniques.

If disposal of the excess spoil is not allowed on the two-acre exempt sites, the material will have to be placed on already revegetated areas or virgin areas in the watershed area. This would involve a certain amount of grading and vegetation so that the disposal site is not left in a degraded condition.

B. Disposal versus Reclamation

The present controversy can be resolved by analysing and distinguishing the activities performed. Operations limited to those activities deemed necessary to dispose of the excess spoil material either on or off the AML project site are not reclamation projects subject to the requirements of Section 404 of SMCRA. I classify such activities, instead, to be necessary though incidental parts of on-going AML projects. In such cases the costs of hauling, disposing, grading and revegetating the excess material are merely incorporated into the costs of completing the project.

I can find nothing in the statute or legislative history which would necessarily constrain OSM's discretion in this area. OSM has two choices: either dispose of the excess material on site if possible or dispose of it off-site. If the material must be disposed of off the AML site, I can find no logical reason or legal basis that would dictate the manner or location of disposal. In fact, I find it highly unlikely that Congress would favor creating a new disposal site and disturbing virgin land instead of placing any excess material on existing disposal sites or on already disturbed lands. The mere fact that the disposal

Operation results in partial or full reclamation of a previously disturbed area is an added benefit but does not, by itself, alter the basic character of the operation. Certain AML projects, such as landslides, burning refuse piles and stream channel clean-outs, generate excess material that requires disposal in some location. How the disposal is accomplished and the location selected are programmatic and policy decisions for which OSM has discretionary authority.

Limitations on this authority occur, however, when the basic character of the disposal operation is changed. That is, if the disposal operation is enlarged beyond that deemed necessary and proper to dispose of the excess material, the operation then takes on the characteristics of a separate and independent reclamation project which would, of course, be subject to the eligibility requirements in Section 404 of SMCRA.

The line between what constitutes a disposal operation in contrast to a separate and independent reclamation project is not always apparent. For example, consider a situation where the project officer has a choice between placing the excess spoil on an undisturbed site approximately one mile from the AML site or placing it on a post-1977 disturbed site two miles away. The longer distance in the latter case would result in slightly higher costs but the program would recognize the additional benefits of not unnecessarily disturbing virgin land as well as partially reclaiming the disturbed site in question. Does the slight increase in costs change the basic nature of the operation? In terms of this hypothetical, I think not. Here the slight increase in costs could be justified when balanced against the short- and possibly long-term adverse environmental effects caused by disrupting the ecosystem of the undisturbed land.

Consider, however, a slightly different example. Once again the project officer has two alternatives: an undisturbed site one mile away and a post-1977 affected area ten miles away. An analysis of the alternatives shows that disposal of the material on the closest site will not result in any long term adverse impacts on the area's ecology nor will it unduly restrict the future utility of the land. On the other hand, disposal on the latter site would more than double the costs of the disposal operation. Despite such additional costs, however, the project officer selects the site ten miles away since it provides multiple benefits; that is, it disposes of the material, avoids unnecessary disruption of an area's ecology and eliminates an existing threat to the public health and safety. Is this decision an abuse of OSM's discretionary authority? Again, the answer is probably not.

Despite the additional costs, the essential character of the disposal operation remains intact. No additional reclamation is performed on the post-1977 site over what is deemed necessary and proper to backfill and regrade the material. The disposal site

only as large as is technically required to dispose of the material and the overall effect on the project's costs are not significant.

The point of this example is not to argue whether the scope for the disposal operation has been changed; rather, it is meant to demonstrate that OSM has a certain latitude in designing and carrying out its reclamation projects. Whether OSM follows the least or most cost effective alternative available is a policy and programmatic decision. I find nothing in the statute or the legislative history of Title IV which circumscribes the agency's discretion to design the scope of its reclamation projects. The design of a project is the prerogative of the agency and should not be overturned unless clearly arbitrary and capricious under the specific circumstances.

Consider one final situation. Here the facts are the same as in the preceding example except that the Regulatory Authority has determined that an operator has some continuing reclamation responsibility for the post-1977 affected site. Does this additional fact disqualify the site? Again the answer is no. The disposal of the excess material is not a reclamation project, and therefore it is not subject to the eligibility requirements in Section 404. The existence or non-existence of continuing reclamation responsibility does not affect OSM's authority to dispose of the excess material. I realize, however, that there may be several sound policy reasons for not disposing excess material on this type site. The purpose of this example, though, is to demonstrate that this would be a policy decision and not a legal requirement.

To assist OSM in analyzing these types of cases, I have listed below several conditions that should be considered before excess spoil from AML projects is placed on post-1977 affected lands:

1. The disposal effort should not significantly increase the costs of completing the AML project;
2. The disposal activity should be limited to those actions necessary to properly dispose of the material; and
3. The disposal site should only be as large an area as is technically required.

C. St. Charles Watershed Project

Without the specific facts concerning the disposal sites in the St. Charles Watershed Project, I am unable at this time to provide an opinion as to the legality of the proposed actions. Each disposal site, however, should be analyzed based on the above factors before a decision to fund these activities is made.

Summary

Spoil material generated by a bona fide AML project may be placed on areas mined and left unreclaimed after August 3, 1977 under the conditions discussed in this memorandum. OSM and the states with approved AML programs, appear to have considerable latitude in designing their projects including the discretion to fund more costly alternatives. This discretion is limited, however, to achieving the purposes of Title IV. It is not and should not be viewed as a license to effect reclamation using AML funds which could not be otherwise legally accomplished.

cc: James R. Harris
William B. Schmidt
Brent Wahlquist
Marshall Cutsforth
Jim Fary
Anna Norton, Field Solicitor's Office, Pittsburgh
William Stanley, Field Solicitor's Office, Pittsburgh
Glenn Tiedt, Regional Solicitor's Office, Denver
Gerry Thornton, Regional Solicitor's Office, Tulsa

CHAPTER 4-06
CHARACTERISTICS OF AMLR FEDERAL ASSISTANCE

4-06-00	Types of AMLR Federal Assistance
10	Eligibility
20	Extraction of Coal as an Incidental Part of an AML Reclamation Project
30	Site Eligibility for AMLR Projects
40	Allowable Costs
50	Unallowable Costs
60	Grant/Cooperative Agreement Periods
70	Overtime Compensation on Federally- Assisted Construction Contracts

4-06-30 SITE ELIGIBILITY FOR AMLR PROJECTS

A. Policy. It is OSMRE's policy that eligibility determinations are the primary responsibility of the State/Tribe under an approved AMLR Plan. (Note: If an ineligible project is funded, the appropriate procedures will apply to recover such funds.) Eligibility determinations shall be prepared as part of each State grant application according to the procedures set forth in the State AMLR Plan. The following policies are set forth to assist the Field Offices in reviewing specific eligibility issues.

1. Active Mining. Whenever it is necessary, as part of an AML reclamation project, to gain access across or to affect property which has been used or affected by mining after August 3, 1977, reclamation on these sites will be confined to repairing the damage caused by the use of these sites to support AML reclamation activities.

If further reclamation activities are necessary to repair damages caused by accessing an eligible site, such activities must be fully documented and justified in the project narrative prior to the authorization of funds.

4-06-30.A (Continued)

2. Bond Forfeiture. Pre-SMCRA State/Tribal reclamation bonds will render a site ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the AML Fund may be sought. (See Preamble to 30 CFR Part 870.)

When assets have been recovered or obtained from all parties responsible for the reclamation, and the assets obtained are insufficient to meet all reclamation costs, the property in question will remain eligible for reclamation to the extent that additional funds are required.

When all assets of the responsible parties are identified and legal proceedings instituted to recover such assets, and the monies, if recovered, are not sufficient to cover all the reclamation costs, the properties will remain eligible as long as the administering agency enters into a binding contract with the State/Tribal Attorney General's Office or appropriate State/Tribal office, providing that any recovered funds will be turned over to the appropriate AMLR account.

3. Eligible Sites Reaffected by Post-SMCRA Activities. When a site (e.g., coal refuse pile, slurry pond or wildcat) meets the eligibility criteria in Section 404 of SMCRA, and has been reaffected by mining after August 3, 1977, this site will remain eligible for AMLR funding despite such post-SMCRA mining if the following conditions are met:

- a. The post-SMCRA mining did not substantially increase or alter the environmental damage presented by the pre-SMCRA mining;
- b. The total costs of the reclamation activities are not increased by the post-SMCRA mining; and
- c. There is no known responsible party, or, if the responsible party is known, monies that are or may be recovered are insufficient to pay the total cost of reclamation.

Recovered monies, where and when available, must either be used as part of the reclamation activities or be deposited in the appropriate AMLR account.

4-06-30.A.3 (Continued)

If these conditions are not met, that portion of the site unaffected by the post-SMCRA mining activities will still remain eligible. If this situation occurs, the project can be altered to include only the eligible portion, if feasible, or funds from non-AMLR sources may be used to pay for the percentage of the project deemed to be ineligible.

4. Hazardous Substances. If the proposed project involves the transfer, removal or reclamation of any hazardous substances, the eligibility opinion should provide a statement that the State/Tribal Attorney General's Office or the Agency's chief legal counsel has reviewed the proposed project plans and that they comply with all applicable State/Tribal and Federal laws concerning removal or reclamation of such substances.
5. Eligibility Opinions on Federal Reclamation Program Sites. The determination of eligibility on Federal Reclamation Program (FRP) sites should be done by a State/Tribal Attorney General's Office or by the AMLR agency's legal counsel because eligibility determinations are usually issues concerning State/Tribal law. If a State/Tribe does not provide a determination of eligibility for a FRP project, then the determination of eligibility should be done by the appropriate Regional or Field Solicitor's Office.
6. Multi-Use Sites. Multi-use sites are sites on which the land or other property was adversely affected by mining prior to August 3, 1977, and which was subsequently used in whole or in part for some non-mining activity. Such properties remain eligible for AMLR funding only to the extent that mining related problems exist, and that they have not been altered or increased by non-mining activities. Under certain circumstances, the intervening use may shift reclamation responsibility away from the AMLR program.
7. Public Use Facilities. Projects for the repair or replacement of public facilities (Priority 5), such as roads or bridges, which were damaged as a result of mining activities, may be eligible if the legal opinion confirms that the damage is a result of past mining activities and not from normal deterioration or lack of repair by local authorities.

4-06-50 (Continued)

3. Costs for activities which significantly alter the approved program and were not approved through appropriate revisions; and
4. Construction costs in an administrative agreement.

4-06-60 GRANT/COOPERATIVE AGREEMENT PERIODS

- A. Cooperative agreements shall normally be approved for a period of one year and may be entered into at anytime during the course of a year. Extensions of time may be granted at the requests of the State with adequate justification. (See Chapter 1-81).
- B. Construction grants shall normally be approved for a period of three years with projects beginning and ending during the life of each grant. Administrative grants are awarded for a period of one year.
- C. Special 10% Set-Aside Grants shall normally be approved for a period of 30 days (see chapter 4-20).

4-06-70 OVERTIME COMPENSATION ON FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS

- A. Section 329 of the Contract Work Hours and Safety Standards Act [40 U.S.C. 327 et seq.] specifies three categories of contracts which are covered by the Act. It has been determined that none of these categories is applicable to contracts funded by OSMRE Abandoned Mine Land Reclamation Program construction grants to States/Tribes. The United States is not a party to such contracts; they are not made on behalf of the United States; and, although they involve grant funds, the grants are not made pursuant to a statute specifying wage standards for such work.
- B. Therefore, the provisions of the Contract Work Hours and Safety Standards Act regarding overtime compensation on federally-assisted construction contracts do not apply to OSMRE AML construction grants.

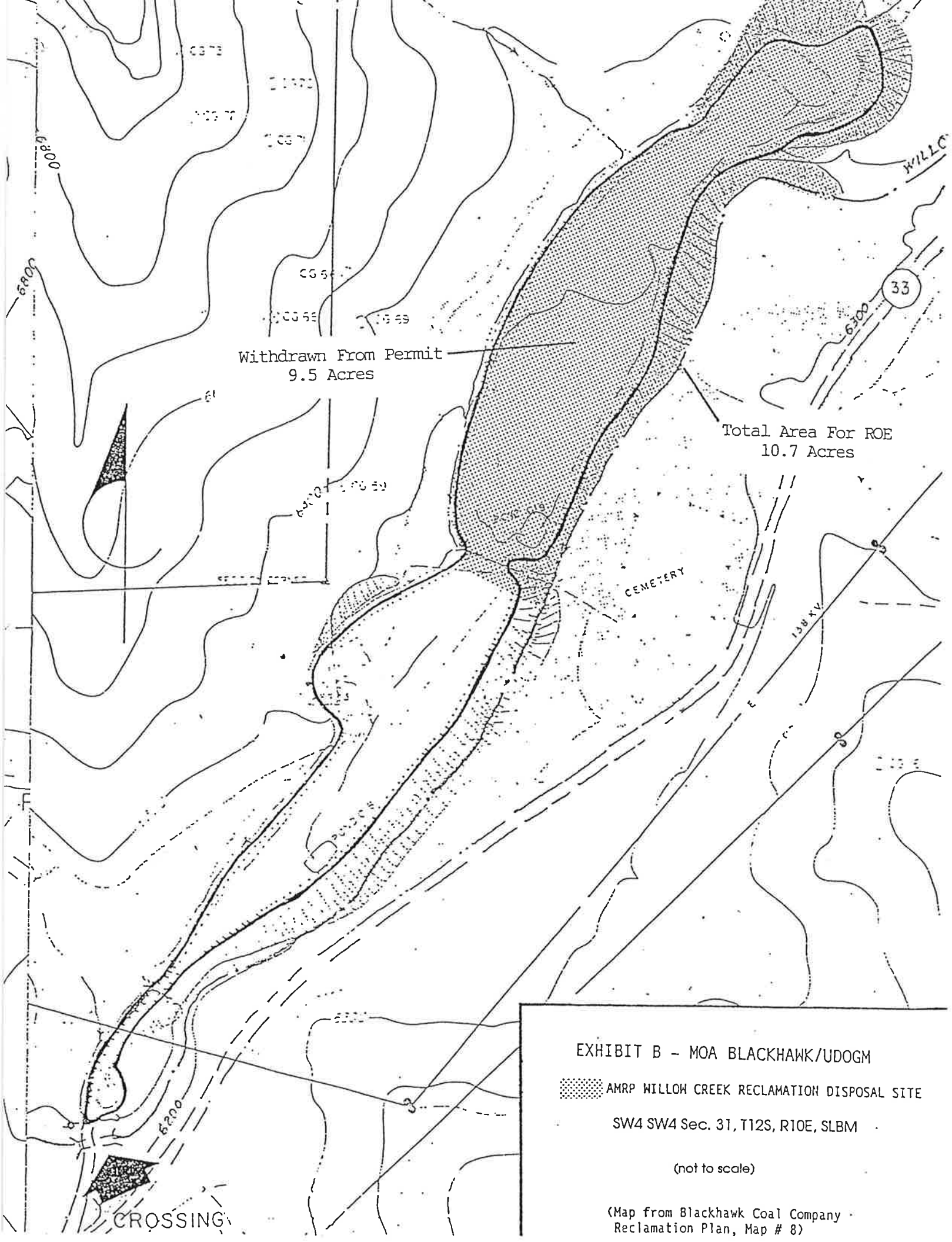


EXHIBIT B - MOA BLACKHAWK/UDOGM

AMRP WILLOW CREEK RECLAMATION DISPOSAL SITE

SW4 SW4 Sec. 31, T12S, R10E, SLBM

(not to scale)

(Map from Blackhawk Coal Company
Reclamation Plan, Map # 8)

INGRESS-EGRESS/RIGHT OF ENTRY CONSENT FOR
RECLAMATION, MONITORING & MAINTENANCE

by

BLACKHAWK COAL COMPANY

The undersigned, Blackhawk Coal Company (hereafter the Holder), does hereby consent to the following activities by the Utah Division of Oil, Gas & Mining, Department of Natural Resources and its agents, employees or contractors (hereinafter collectively referred to as the Division):

1. Ingress and Egress along a designated route on the following described land:

NE4 of Sec. 1, T13S, R9E, SLBM and NW4 NW4 of Sec. 6, T13S, R10E, SLBM

For the purpose of access to the Abandoned Mine Land Program ("AMRP") Willow Creek Reclamation Disposal Site ("Reclamation Site") from the Willow Creek Pile and from U.S. Route 191.

2. Duly authorized employees, agents and/or contractors of the Division may enter upon the hereinafter described lands to perform reclamation activities to eliminate hazards created by past mining activities that affect the public's health, safety and general welfare; including but not limited to the following:
Soil test pits, transportation and burial of coal refuse, covering refuse material with on-site soil material, installation of proper drainage and the revegetation of disturbed areas.

The Division may also enter upon hereinafter described lands to monitor the success of the reclamation after construction and to maintain the intended level of reclamation at the Willow Creek Project reclamation sites in Carbon County, Utah, more particularly described as follows:

Reclamation Site

SW4 SW4 of Sec. 31, T12S, R10E, SLBM

And more specifically described in the Memorandum of Agreement between the Division and the Holder, dated May 16, 1989:

Attached hereto and hereby made a part hereof.

Sediment Ponds

E2 NW4 NW4 and SW4 NE4 NW4 and NW4 NW4 NW4 of Sec. 1, T13S, R9E, SLBM
Area west of the D&RGW Railroad tracks and east of U.S. Route 6

Peacock Pile (east pile)

SE4 SW4 NE4 Sec. 1, T13S, R9E, SLBM
Area south of Willow Creek

Willow Creek Pile

NE4 SW4 NE4 and SE4 NW4 NE4 of Sec. 1, T13S, R9E, SLBM
Area north of U.S. Route 191

Canyon Mouth Pile

SE4 NE4 NE4 of Sec. 1, T13S, R9E, SLBM
Area north of U.S. Route 191 and south of Willow Creek

Cemetery Pile

N2 NW4 NW4 of Sec. 6, T13S, R10E, SLBM
Area north of U.S. Route 191 and south of Willow Creek

Upper Willow Creek Piles

S2 NE4 SW4 and N2 NW4 SE4 and SE4 NE4 NE4 SW4 and SE4 SW4 NE4 of Sec. 31, T12S, R10E, SLBM
Area north of U.S. Route 191 and south of Willow Creek

Hardscrabble Portals

E2 SE4 NW4 and W2 SW4 NE4 of Sec. 10, T13S, R9E, SLBM
Area west of the Hardscrabble Canyon road

3. The Division proposes to use adjacent and/or nearby material if appropriate, for reclamation of the mine site area.
4. The Division expressly assumes liability for any and all injuries (including death) sustained by its employees, agents and contractors because of the Division's activities on said lands. Furthermore, the Division expressly waives liability of the Holder for any and all injuries (including death) and property damage sustained by Division employees on said lands.

Blackhawk Coal Company reserves all rights with respect to the above described lands, including, but not limited to, the right of access at all times for the purpose of inspecting the Division's activities.

5. Except as herein set forth in this ingress-egress/right of entry consent, neither the Division nor Holder shall undertake any activity, either expressed or implied, nor make any representation which purports to bind the other.
6. All work performed shall be conducted in a professional manner in accordance with all applicable laws and regulations. Further, duly authorized personnel of the Division are granted permission to inspect work at reasonable times.
7. It is expressly understood that all costs incurred for studies and reclamation work shall be the sole liability of the Division with the exception of costs agreed to be paid by Blackhawk, set forth in the Memorandum of Agreement.
8. If the Division anticipates the conduct of activities on lands of Holder other than those specifically described herein the Division will request permission from Holder for its intended activities prior to entry on those lands.

Dated this 16th day of May, 1989.

DIVISION OF OIL, GAS & MINING

BLACKHAWK COAL COMPANY

By: Dianne R. Nielson
 Name: Dianne R. Nielson
 Title: Director

By: J.E. Katlic
 Name: J.E. Katlic
 Title: President

Blackhawk Coal Company

By: Mary Ann Wright
 Name: Mary Ann Wright
 Title: AMR Administrator

Approved as to form:

Barbara W. Roberts
 Barbara W. Roberts
 Assistant Attorney General

APPROVED
 LEGAL-FSD

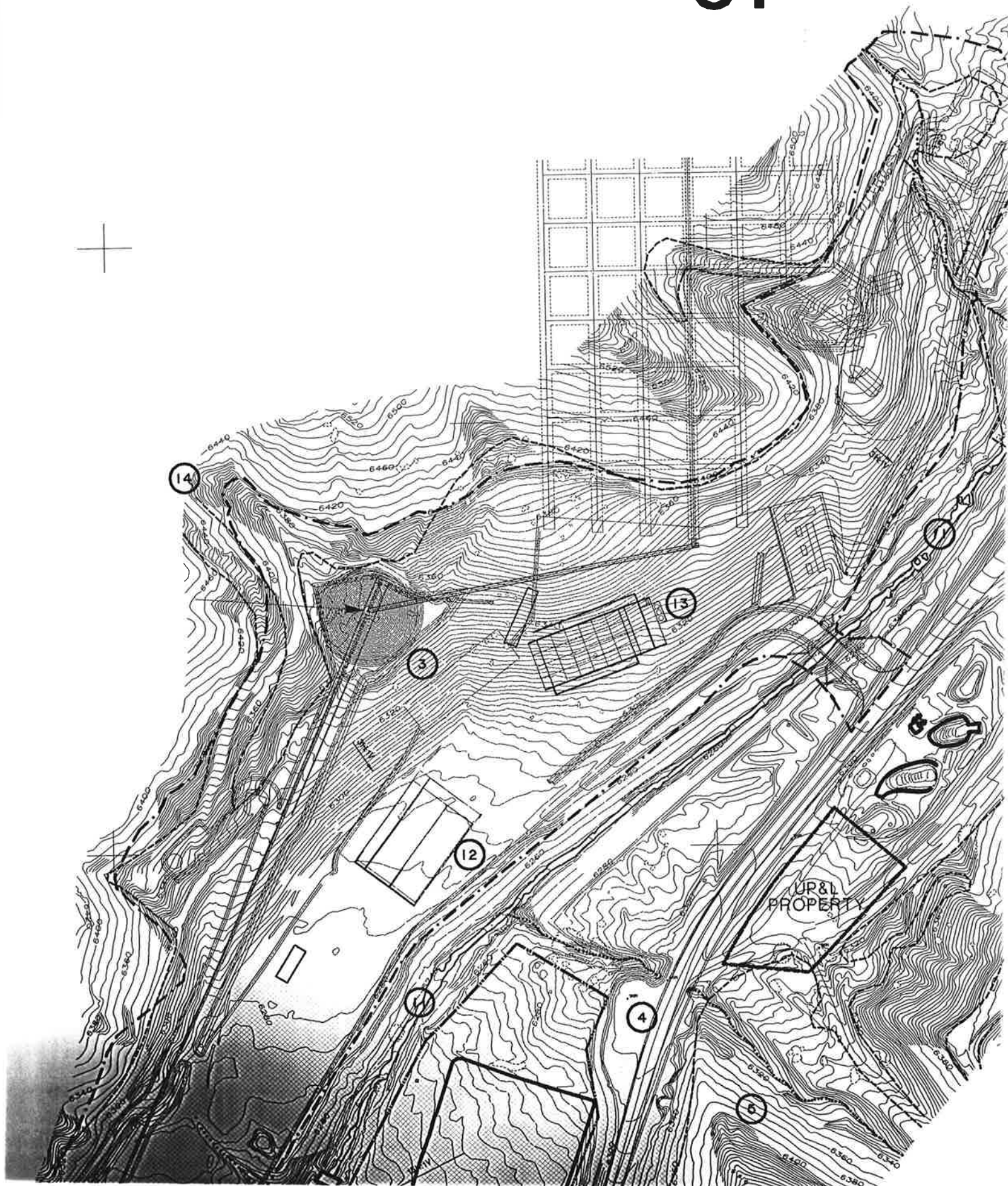




PHOTO 4-2 (PANORAMA OF FACE-UP AREA AND RECLAIMED COAL REFUSE PILE.
WILLOW CREEK AND EXISTING BERM IN FOREGROUND, NATURAL CLIFFS IN BACKGROUND RIGHT)

